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RECENT DECISIONS

BANKRUPTCY—GENERAL ASSIGNMENTS—REMOVAL OF ASSIGNEE BEFORE ADJUDICATION.—A debtor made a general assignment under state law for the benefit of his creditors. A petition in bankruptcy was filed against him within four months, and before adjudication a motion was made in the bankruptcy court to remove summarily the assignee and to appoint a receiver to take possession of the goods. The assignee was of high character and there was no showing that the appointment of a receiver was absolutely necessary. *Held*, the motion will be granted. *In re D. & E. Dress Co.*, 244 Fed. 885, 40 A. B. R. 360. See NOTES, p. 272.

BILLS AND NOTES—NEGOTIABILITY—RECITAL OF "AS PER AGREEMENT."—The defendant made a note containing a recital of the consideration for which it was given and the further clause, "as per contract" of certain date. The plaintiff, a holder in due course, brought an action on the note. *Held*, the note is not negotiable. *Continental Bank & Trust Co. v. Times Pub. Co. (La.)*, 76 South. 612.

Knowledge that a note was given in consideration of an executory contract of the payee will not constitute a defense to an action on the note by a holder in due course, unless he had notice of the breach of the contract. *Rublee v. Davis*, 33 Neb. 779, 51 N. W. 135, 29 Am. St. Rep. 509. And the mere recital of the consideration for which it was given does not affect the negotiability of a note, as where a note reads, "for the privilege of one framed advertising sign * * * for a term of three months" from a certain date. *Seigel Cooper & Co. v. Chicago Trust & Savings Bank*, 131 Ill. 569, 7 L. R. A. 537, 19 Am. St. Rep. 51.

It is well settled that a reference in a note to a prior or contemporaneous contract, which, upon its face, makes the note "subject to" the terms of the contract, destroys its negotiability. *McComas v. Haas*, 107 Ind. 512, 8 N. E. 579; *Klots Throwing Co. v. Manufacturer's Commercial Co.*, 179 Fed. 813, 103 C. C. A. 305, 30 L. R. A. (N. S.) 40. The real question is generally to determine from the language of the instrument whether the contract is incorporated into the instrument or whether the consideration is merely earmarked by it.

In England such references in notes as that of the instant case have been generally held to be mere recitals of consideration or tags of identification. So a recital in a note, "as per memorandum of agreement," was held to have no effect on the quality of the note as a negotiable instrument. *Jury v. Barker*, El. Bl. & El. 459. And a similar holding was made in *Brill v. Crick*, 1 Mees. & W. 232.

In America the courts seem to be rather uncertain in regard to the construction which should be given to stipulations similar to that of the instant case. Consequently there is irreconcilable conflict among the courts. There are decisions which sustain the view that a reference to a prior or contemporaneous contract incorporates the terms